"sions of the Constitution and laws of the United "States, to remove to the Federal court an action "instituted against it by a citizen in the State court, "or of not being permitted to do business in the "State. The proper solution of this question is es- "sential to the orderly adjustment of the conflicting "spheres of our dual system of jurisprudence—na- "tional and State." * * * "The statutes of the "United States, in pursuance of a settled national "policy of affording to citizens of each State the "means of escaping the dangers of local prejudice in "favor of home litigants, prescribe the conditions "and terms under which such actions may be re- "moved to the Federal courts. This is done in the "interest of fair and impartial trials, or, in other words, "in the interest of justice." (Record, page 19.)

"It may not be altogether impertinent to the sub- "ject in hand to say, in conclusion, that it would be "well to remember that it is a narrow and provincial "view to regard these national laws as harsh and "severe edicts imposed by foreign suzerain, instead "of benignant laws imposed by ourselves in the in- "terest of a broad and national justice; and that in "their practical operation, many more of our own "citizens are benefited by them in their litigation in "other States than are inconvenienced by them in "favor of citizens of foreign States litigating in our "Commonwealth." (Record, page 28.)

It is obvious, from the statement of the proposition against us, that the adverse doctrine is, that a foreign corporation admitted to the State has no rights whatsoever except such as it may enjoy at the caprice of the State, exercisable and exercised, in violation of rights guaranteed by the Constitution of the United States; that the corporation can only remain, divested of rights guaranteed by the Federal Constitution and Federal statutes; that, except because of limitations in the State Constitution, the corporation may be compelled to renounce access to courts erected for its protection by the Constitution of the United States; to renounce the guar-

antee to it of due process of law given to it by the Fourteenth Amendment and all other immunities against the exercise of arbitrary power.

We submit that the doctrine of the State court is unsound and is in conflict with all the decisions of this court saving that of Doyle *vs.* Continental Ins. Co., 94 U. S., 535, which we claim was overruled in Barron *vs.* Burnside, 121 U. S., 186. If, as held in Home, &c., Co. *vs.* Morse, 20 Wall., 445, the State cannot deprive a foreign insurance company of its right of access to the Federal courts, upon what principle can it impose upon it the penalty of expulsion from the State if it exercise that right? May the State accomplish by indirection what it is forbidden to do directly, or, *e converso*, if the State, as a condition of its remaining within its borders, may require a foreign corporation to surrender its right of access to the Federal courts, is not the decision of this court in Home, &c., Co. *vs.* Morse, that the State may not deprive the company of access to the Federal courts, of no avail? The foreign corporation, when admitted to the State, cannot thereafter be punished for insisting upon a right guaranteed to all, to individuals and to corporations, by the laws of the United States. However capricious the State may be in its exercise of its right to forbid entry, this forbidding will be nugatory if the law which forbids is in conflict with a requirement of such laws, and, being nugatory, there is a right to enter which can only be prevented by a valid Act denying such right. The right of access to the Federal courts is as fully guaranteed by Federal Constitution and laws as is due process, and the equal protection of the laws. If a State, by such legislation as section 631, may expel the foreign corporation for the exercise of its rights of access to the Federal courts, why may not it provide such expulsion for the refusal to submit to a deprivation of due process, or the equal protection of the laws? This court has held that by the Fourteenth Amendment, the State is forbidden to de-

prive a foreign corporation of due process and equal protection of the laws.

Smyth *vs.* Ames, 169 U. S., 466.

Due process includes access to all legal tribunals, State and Federal, and to an orderly and just administration of the laws. If the State could deny due process to a foreign corporation, it might decline to admit it except upon condition of its surrender of its right of access to either State or Federal courts, leaving it defenseless.

It has been repeatedly held by this court, that a State cannot even limit to its own courts the enforcement of a controversy of a nature included within the grant of jurisdiction to the Federal courts by the Federal Constitution and laws.

Lincoln Co. *vs.* Luning, 133 U. S., 529, 33 L. Ed., 766;

Smith, &c., Co. *vs.* McGroarty, 136 U. S., 237, 34 L. Ed., 346;

Madisonville Traction Co. *vs.* St. Bernard Mining Co., 196 U. S., 239, 49 L. Ed., 462;

Chicago & N. W. Ry. Co. *vs.* Whitton, 13 Wall., 270, 20 L. Ed., 571.

Nor can the jurisdiction of the Federal courts be impaired by State legislation.

Hyde *vs.* Stone, 20 How., 170, 15 L. Ed., 874;

Wabash, &c., Ry. Co. *vs.* Brow, 164 U. S., 271, 41 L. Ed., 431;

Smyth *vs.* Ames, 169 U. S., 466, 42 L. Ed., 819.

In Wabash, &c., Co. *vs.* Brow, this court (276) said:—

> "The legislature or the judiciary of a State can "neither defeat the right given by a constitutional "Act of Congress to remove a case from a court of "the State into the Circuit Court of the United "States, nor limit the effect of such removal."

The vice of the doctrine announced by the State court is that in declaring the absolutism of State action, it

ignores the limitation by which the Federal Constitution fetters State legislation.

It is true, that in Paul *vs.* Virginia, 8 Wall., 168, 19 L. Ed., 357, this court (181) did say:—

> "Having no absolute right of recognition in other "States, but depending for such recognition and the "enforcement of its contracts upon their assent, it "follows, as a matter of course, that such assent may "be granted upon such terms and conditions as those "States may think proper to impose. They may ex- "clude the foreign corporation entirely, they may "restrict its business to particular localities, or they "may exact such security for the performance of its "contracts with their citizens as in their judgment will "best promote the public interest. The whole matter "rests in their discretion."

This is certainly the broadest statement of the doctrine of plenary State action which has ever been made by this court, but it has said, the first saying being in Ducat *vs.* Chicago, 10 Wall., 410, 19 L. Ed., 793, in respect to the nature or degree of discrimination which a State may make between her own corporations and those of other States:—

> "It belongs to the State to determine, subject only "to such limitations on her sovereignty as may be "found in the fundamental law of the Union."

In Home Ins. Co. *vs.* Morse, 20 Wall., 445, 455-6, 22 L. Ed., 365, 369, this court gave warning that the general language in Paul *vs.* Virginia must not be accepted as unmodified by the principle announced in Lafayette, &c., Co. *vs.* French, 18 How., 407, 15 L. Ed., 453, where it said:—

> "A corporation created by Indiana can transact "business in Ohio only with the consent, express or "implied, of the latter State. This consent may be "accompanied by such conditions as Ohio may think

"fit to impose, and these conditions must be deemed "valid and effectual by other States and by this court; "*provided*, they are not repugnant to the Constitution "and laws of the United States, or inconsistent with "those rules of public law which secure the jurisdic- "tion and authority of each State from encroachment "by all others, or that principle of natural justice "which forbids condemnation without opportunity "for defense."

In the Morse case, referring to the constitutional right of access to the Federal courts, and indicating the invalidity of an agreement between a non-resident individual and a citizen of the State of the forum to abjure the Federal courts, this court said: "We see no difference "in principle between the cases supposed, and the case "before us. Every citizen is entitled to resort to all the "courts of the country, and to invoke the protection "which all the laws of all those courts afford." It was also said that the Insurance Company's right of removal was:—

"Denied to it by the State court on the ground that "it had made the agreement referred to, and that "the statute of the State authorized and required "the making of the agreement. We are not able to "distinguish this agreement and this requisition, in "principle, from a similar one made in the case of an "individual citizen of New York. A corporation has "the same right to the protection of the laws as a "natural citizen, and the same right to appeal to all "the courts of the country. The rights of an individ- "ual are not superior, in this respect, to that of a cor- "poration. The State of Wisconsin can regulate its "own corporations and the affairs of its own citizens "in subordination, however, to the Constitution of "the United States," &c.

This court has repeatedly asserted the foregoing limitation of the State's power, viz., that its acts must not be inconsistent with the Federal Constitution and laws

enacted in pursuance thereof. The decision we now assail takes no note thereof. It proceeds upon the unqualified utterances of Paul *vs.* Virginia, which, although pertinent under the circumstances of that case, are applicable to the present case only when modified by the limitation announced, as above set forth, in Lafayette, &c., Co. *vs.* French, Ducat *vs.* Chicago, &c. That limitation, we contend, to wit, that the State's action is "subject "only to such limitations on her sovereignty as may be "found in the fundamental law of the Union," or that a foreign corporation may be admitted into a State upon terms imposed by the latter, "Provided they are not re- "pugnant to the Constitution and laws of the United "States," &c., forbids a State to deny to a foreign corporation admitted to its confines the right of access to the Federal courts given it by the Federal Constitution and laws. To what did this court refer in Lafayette, &c., Co. *vs.* French, when it said that the conditions of admission of a foreign corporation must not be "repug- "nant to the Constitution and laws of the United "States?" Certainly when reaffirming the principle in Home, &c., Co. *vs.* Morse, in Barron *vs.* Burnside and subsequent cases along the same line, this court meant that the foreign corporations could not be deprived of the right of access to the Federal courts. It declared that the State, in its plenary power to prescribe the conditions of a corporation's entry of its territory, could not prescribe its surrender of its access to the Federal courts, when it held the State could not prescribe conditions "repugnant to the Constitution and laws" of the United States.

The question now presented is of the first importance. The State Legislature by the Supreme Court of the State has been permitted deliberately to defeat a provision of the Federal Constitution, and the laws enacted pursuant thereto, and to prevent their application to foreign insurance companies in Kentucky. The legislature, seeking to thwart the purpose of the framers of the Federal Constitution to provide a tribunal free from

local prejudice, is now upheld and commended by the State court as making a provision not distrustful of the Federal courts, but demanded by the convenience of the people of a "sparsely settled State." The doctrine now promulgated is that the States may accept or prevent the application of the Federal Constitution accordingly as the convenience of the people of the States may dictate; and that although they may not directly forbid, even a foreign corporation, from resorting to the Federal courts, they may accomplish the same purposes indirectly, by imposing upon the exercise of the Federal right, an enormous penalty which in the present case involves the expulsion from the State and the destruction of a large business "worth many thousands dollars."

Whilst it is conceded the State may not forbid removal, it is held that it may impose as a penalty for removal the sacrifice and destruction of an entire business built up in many years by the investment of capital, energy and brains. The proposition involves the right of the State to prevent the operation of the Federal Constitution within its borders as fully as it could if allowed to forbid the foreign corporation to remove a case to the Federal court.

The spirit of enactments like the one in question is hostile to the Federal Constitution. It involves the theory that the Constitution should not apply where its application may be inconvenient to the people of a certain State, the people being the judges. It ignores, as explained by the dissenting judges, that "many more of "our own citizens are benefitted by them ('these national "'laws') in their litigation in other States than are in- "convenienced by them in favor of citizens of foreign "States litigating in our Commonwealth." The framers of the Federal Constitution took the view thus well expressed by the dissenting judges, but the State Legislature and a majority of the judges of the State's highest court take the contrary view. The question for this court is: Shall the Constitution or the State legislation prevail?

We contend that this question is concluded by authority. As was said by the Kentucky Supreme Court in Com. *vs.* E. Tenn. Coal Co., 97 Ky., 238:—

> "From this review of the decisions of the Supreme "Court of the United States, it would seem that there "is no longer any question as to the invalidity of legis- "lation such as this Act we are now considering. "Those decisions establish the doctrine that this right "of removal is a constitutional privilege conferred "by the Constitution and laws of the United States "upon every citizen of a State, foreign to the State "in which the suit is brought," &c.

This decision held invalid a section of the chapter embracing section 631, affecting all corporations except insurance companies. The decision we now attack makes insurance companies exceptions to the corporations having the right of removal. All foreign corporations in Kentucky may remove cases to the Federal court except insurance companies.

A review of this court's decisions confirms the enunciation of the Kentucky court in the Coal Company case.

In Lafayette, &c., Co. *vs.* French, 18 How., 404, 15 L. Ed., 451, 452, this court, holding valid a judgment in Ohio against an Indiana corporation summoned in Ohio by service upon its agent therein found, employed the language above quoted, declaring that there was nothing in the requirement of the Ohio laws which imposed upon a foreign corporation the duty of submitting to service upon its agent within the State either "unreasonable in "itself or in conflict with any principle of public law."

This, the earliest decision of this court upon the point in question, is especially instructive, because it recognized the Federal limitations upon the State's powers, although it adjudged valid the State's action in the particular case. The decision thus made this court has often repeated, in its announcement of the Federal limitations upon State legislation.

In Home, &c., *vs.* Morse, 20 Wall., 445, 22 L. Ed.,

365, an action was instituted in a State court upon a policy of insurance and was removed by the insurance company to the Federal court. The State court refused to surrender jurisdiction and proceeded to trial. A judgment rendered therein against the company was affirmed in the highest State court. The State court's retention of jurisdiction was based upon the company's agreement required by a statute of Wisconsin, which declared it unlawful for such company to transact business unless it should first appoint an agent to be served with process and should agree not to remove actions against it to Federal courts, &c. The sole question considered by this court was that of the validity of the statute requiring the agreement, and it elaborately discussed the question involved, both upon principle and authority, and held the statute invalid. After propounding the question, it recited article III., section 2, of the Constitution, and declared:—

> "The jurisdiction of the Federal courts, under this "clause of the Constitution, depends upon and is "regulated by the laws of the United States. State "legislation cannot confer jurisdiction upon the Fed-"eral courts, nor can it limit or restrict the authority "given by Congress in pursuance of the Constitution. "This has been held many times." Citing authorities.

After reciting that a corporation was a citizen within the jurisdiction clause of the Constitution and Removal Act, this court said, concerning the Act:—

> "It confers an unqualified and unrestrained right "to have the case transferred to the Federal courts "upon giving the security required. * * * The "statute of Wisconsin, however, provides as to a cer-"tain class of citizens of other States, to wit, foreign "corporations, that they shall not exercise that right, "and prohibits them from transacting their business "within that State, unless they first enter into an "agreement in writing that they will not claim or "exercise that right."

This court recites the denial of the company's right of removal because of its agreement under requirement of the statute, and declares:—

> "We are not able to distinguish this agreement "and this requisition, in principle, from a similar "one made in the case of an individual citizen of New "York. A corporation has the same right to the pro- "tection of the laws as a natural citizen, and the same "right to appeal to all the courts of the country. The "rights of an individual are not superior in this re- "spect to that of a corporation."
>
> "The State of Wisconsin can regulate its own cor- "porations and the affairs of its own citizens, in sub- "ordination, however, to the Constitution of the "United States. * * *
>
> "We do not consider the question whether the "State of Wisconsin can entirely exclude such cor- "porations from its limits, nor what reasonable terms "they may impose as a condition of their transacting "business within the State. These questions have "been before the court in other cases, but they do not "arise here."

Further, it reviews its language in Paul *vs.* Virginia and Bank *vs.* Earle, remarking, as above quoted, that it must not be taken without the limitation announced in Lafayette Ins. Co. *vs.* French and Ducat *vs.* Chicago; and observes:—

> "None of the cases so much as intimate that con- "ditions may be imposed which are repugnant to the "Constitution and laws of the United States, or in- "consistent with those rules of public law which se- "cure the jurisdiction and authority of each State "from encroachment by others."

It concludes:—

> "On this branch of the case the conclusion is this:
> "1. The Constitution of the United States secures "to citizens of another State than that in which suit "is brought an absolute right to remove their cases "into the Federal court, upon compliance with the "terms of the Act of 1789.

"2. The statute of Wisconsin is an obstruction to "this right; is repugnant to the Constitution of the "United States and the laws in pursuance thereof, "and is illegal and void.

"3. The agreement of the insurance company "derives no support from an unconstitutional statute "and is void, as it would be had no such statute been "passed."

We would especially emphasize what is thus said, because in Barron *vs.* Burnside, *infra*, this court said (199) concerning Doyle *vs.* Ins. Co.:—

"All that there is in the case beyond this, and all "that is said in the opinion which appears to be in "conflict with the adjudication in Ins. Co. *vs.* Morse, "must be regarded as not in judgment."

It consequently results:—

1. That the Federal Constitution still secures the "*absolute right*" of removal aforesaid.

2. That a State statute attempting to thwart it is an "*obstruction*" to that right and repugnant to the Federal Constitution and laws, and illegal and void.

In Doyle *vs.* Ins. Co. this court denied the right of an insurance company to enjoin a State officer from canceling its license because of its removal of a cause to the Federal court. The injunction was denied upon the ground that the State had the right to exclude the foreign corporation or to admit it upon such conditions as it chose, and that the corporation might elect whether it would remain outside the State or enter it upon the condition of surrendering its right of removing cases to the Federal court. In its opinion it is said:—

"The effect of our decision in this respect is that "the State may compel the foreign company to ab- "stain from the Federal courts or to cease to do

"business in the State. It gives the company the "option" &c.

In the dissent of Justices Bradley, Miller and Swayne it is said:—

"Though a State may have the power (if it sees fit "to subject its citizens to the inconvenience) of pro- "hibiting all foreign corporations from transacting "business within its jurisdiction, it has no power to "impose unconstitutional conditions upon their doing "so. A total prohibition may produce suffering and "may manifest a spirit of unfriendliness towards sister "States: but prohibition, except upon conditions de- "rogatory to the jurisdiction and sovereignty of the "United States, is mischievous, and productive of "hostility and disloyalty to the general government. "If the State is unwise enough to legislate the one, "it has no constitutional power to legislate the "other. The citizens of the United States, whether "as individuals or associations, corporate or incor- "porate, have a constitutional right, in proper cases, "to resort to the courts of the United States. Any "agreement, stipulation or State law precluding "them from this right is absolutely void, just as void "as would be an agreement not to resort to the State "courts for redress of wrongs, or defense of unjust "actions," &c.

After reviewing the Morse case, and the claim that power of exclusion included power to annex conditions to admission, the dissenting opinion proceeds:—

"It is just as unsound as it would be for me to say, "that, because I may without cause refuse to receive "a man as my tenant, therefore I may make it a con- "dition of his tenancy that he shall take the life of "my enemy, or rob my neighbor of his property.

"The whole thing, however free from intentional "disloyalty, is derogatory to that mutual comity and "respect which ought to prevail between the State "and general governments, and ought to meet the

"condemnation of the courts whenever brought "within their proper cognizance."

In Barron *vs.* Burnside, 121 U. S., 186, 30 L. Ed., 915, this court adopted the view of the judges who dissented in the Doyle case, and, concerning that case (100), said:—

"The point of the decision seems to have been that, "as the State had granted the license, its officers "would not be restrained by injunction, by a court of "the United States, from withdrawing it. All that "there is in the case beyond this, and all that is said "in the opinion which appears to be in conflict with "the adjudication in Ins. Co. *vs.* Morse, must be re-"garded as not in judgment."

By this enunciation the Doyle case was stripped of every vestige of force as an authority in favor of the power which the Kentucky court has adjudged to reside in the State legislatures. Whatever had been said in that case in favor of such State power was by this court expressly declared *obiter*, or "as not in judgment." This leaves an unbroken line of decision against the power now claimed for the State Legislature in the decision from which we appeal: Ins. Co. *vs.* French, 18 How., 404, L. Ed. XI., 451; Ins. Co. *vs.* Morse, 87 U. S., 20 Wall., 445, L. Ed. 22, 365; Barron *vs.* Burnside, 121 U. S., 180, L. Ed.; South Pac. Co. *vs.* Denton, 146 U. S., 202, L. Ed. 36, 942; Martin *vs.* B. & O. R. R., 151 U. S., 673, L. Ed. 30, 510; Barrow S. S. Co. *vs.* Kane, 170 U. S., 100, 42 L. Ed., 964; Blake *vs.* McClung, 172 U. S., 230, 43 L. Ed., 438; Dayton C. & I. Co. *vs.* Barton, 183 U. S., 23, 25, L. Ed. 40, 61, 64, and Federal cases, Bigelow *vs.* Nickerson, 70 Fed. R., 121; Met. L. Ins. Co. *vs.* McNall, 81 Fed. R., 888; Mut. L. Ins. Co. *vs.* Boyle, 82 Fed., 705.

Barron *vs.* Burnside is decisive of our contention. A decision of that case to the contrary, would have resulted, not in the engineer's liberation, but in his punishment. No such distinction as is attempted to be made between Barron *vs.* Burnside and Doyle *vs.* Ins. Co. is

maintainable. The cases are not distinguishable on the ground that the former involved a criminal, and the latter an equitable, proceeding. The two decisions are diametrically opposed and are irreconcilable, as appears when we reflect that if the court in Barron *vs.* Burnside had followed the doctrine of Doyle *vs.* Insurance Co. the engineer, instead of being released upon writ of *habeas corpus* would have been incarcerated for transacting business as agent of a company which had refused to obtain the license required by the statute. If, in Barron *vs.* Burnside, this court had adhered to the doctrine supposed to have been countenanced by the decision in Doyle *vs.* Ins. Co., that the corporation must have abjured the State or must have obtained the license required by the statute.

In Barron *vs.* Burnside, a locomotive engineer of the Chicago and Northwestern Railway Company, in Iowa, was arrested by Sheriff Burnside under a warrant for—

> "The crime of knowingly transacting a portion of the "business of the Chicago & North-Western Railway "Company within the State of Iowa, when such rail-"way company had no valid permit to do business in "the State of Iowa." as provided by the statute.

The statute provided that thereafter any foreign corporation desiring to enter or to continue in the State should be required to file with the Secretary of State a copy of its articles, should consent to service of process upon its agents, and should request a permit to do business; that such application should contain a stipulation that the permit should be subject to each provision of the Act. One of its provisions was, that any such corporation, sued in the courts of the State, which should remove the action to the Federal court on the ground of diverse citizenship, or local prejudice, should "thereupon "forfeit and render null and void any permit issued or "authority granted to such corporation to transact busi-"ness in this State," &c. Another was that any corporation thereafter transacting business without having complied with the statute and without having obtained

a valid permit should forfeit $100, and that any agent knowingly transacting business for such company having no permit should be fined for each offense $100 or imprisoned in the county jail not exceeding thirty days, and should pay costs.

The railway company refused to obtain a permit under the statute, claiming it to be void because the right to the permit was made dependent upon surrender of the right to remove an action to the Federal court. Barron obtained a writ of *habeas corpus*, and was justified by the judgment of this court by its unanimous opinion, in which it was said (190):—

> "On the hearing before the State court it was "urged, among other things, that the statute of Iowa "is void as an attempt to interfere with the jurisdic- "tion of the Federal courts, as established by the "Constitution of the United States and Acts of Con- "gress. The court upheld the validity of the statute."

After quoting the statute, this court, in that case, said that the initial step required of the corporation, in order to obain a permit, was to file articles, consent to service of process, and agree that the permit should be subject to the provisions of the Act; that the proceeding was a unit, the various things being not separable. These premises were all:—

> "Indissolubly bound up with the application for a "permit, which is to be subject to every provision of "the Act. The permit cannot be issued unless such "a stipulation is given, and the corporation is not to "be permitted to carry on its business in the State "unless the permit is issued to it and received by "it." * * *
>
> "It is apparent that the entire purpose of this "statute is to deprive a foreign corporation, in suits "such as those mentioned in section 3, of the right "conferred upon it by the Constitution and laws of "the United States, to remove a suit from the State "court into the Federal court either on the ground

"of diversity of citizenship or of local prejudice. The "statute is not separable into parts. An affirmative "provision requiring the filing by a foreign corpora- "tion, with the Secretary of State, of a copy of its "articles of incorporation, and of an authority for the "service of process upon a designated officer or agent "in the State, might not be an unreasonable or ob- "jectionable requirement, if standing alone; but the "manner in which, in this statute, the provisions on "those subjects are coupled with the application for "the permit and with the stipulation referred to, "shows that the real and only object of the statute, "and its substantial provision, is the requirement of "the stipulation not to remove the suit into the "Federal court."

This court next limited the Doyle case in the way already recited, and after reviewing that case and the Morse case, concluded that, although there were stipulations in those cases not to remove, and none in the case before it, yet that the principle was the same. It said (200):—

"Its (railway company's) right, equally with any "individual citizen, to remove into the Federal "court, under the laws of the United States, such "suits as are mentioned in the third section of the "Iowa statute, is too firmly established by the deci- "sions of this court to be questioned at this day; and "the State of Iowa might as well pass a statute to de- "prive an individual citizen of another State of his "right to remove such suits.

"*As the Iowa statute makes the right to a permit de- "pendent upon the surrender by the foreign corporation "of a privilege secured to it by the Constitution and laws "of the United States, the statute requiring the permit "must be held to be void.*" (Italics ours.)

"The question as to the right of a State to impose "upon a corporation engaged in interstate commerce "the duty of obtaining a permit from the State, as a "condition of its right to carry on such commerce, is "a question which it is not necessary to decide in this "case. In all the cases in which this court has con-

"sidered the subject of the granting by a State to a "foreign corporation of its consent to the transaction "of business in the State, it has uniformly asserted "that no conditions can be imposed by the State "which are repugnant to the Constitution and laws "of the United States." Citing Ins. Co. *vs.* French, &c.

The feature of agreement to surrender Federal jurisdiction which there appeared was of no significance. It was the request of surrender, not the agreement, which offended the Federal Constitution and laws. The spirit of the decision was that any device of the State legislature to prevent the exercise of a right which the Federal Constitution conferred, was invalid. It was the company's "right equally with any individual citizen, to re- "move into the Federal court under the laws of the "United States, &c.," that was said to be "too firmly es- "tablished by the decisions of this court to be questioned "at this day." When this court said that the State of Iowa "might as well pass a statute to deprive an indi- "vidual citizen of another State of his right to remove "such suits" it referred to any attempt upon the part of a State to thwart the right of removal, and not to some particular device, such as the requirement of an agreement not to remove. Accordingly, it was the enactment which required the surrender of the right of removal secured by the Federal Constitution and laws, that was denounced by this court, when it vitiated the requirement of a permit, the grant of which was made dependent upon a surrender. The whole tenor of the decision is to the point that any State legislation devised to defeat the Federal right of removal is, as declared in the Morse case, is an "obstruction" to the Federal right and hostile to the Federal Constitution and laws securing it.

The principle adjudged in Barron *vs.* Burnside has been, as we have asserted, repeatedly affirmed by this court.

In Sou. Pac. Co. *vs.* Denton, 146 U. S., 202 (36 L. Ed., 942), an action was brought January 29th, 1889,

in the United States Circuit Court for the Western District of Texas by one Denton against the Southern Pacific Company to recover damages for the death of her son caused by the company's negligence. The petition alleged the plaintiff to be a citizen residing in Red River County, in the Eastern District of Texas, and the defendant a Kentucky corporation operating a railroad through Texas, to be a resident of El Paso, in the Western District of Texas. The railroad company demurred specially to the jurisdiction over defendant in the Western District of Texas, and its position was sustained by this court, which held the jurisdiction to be in the Eastern, not in the Western, District, and said:—

> "The allegations made in the petition, and ad-
> "mitted by the demurrer, bearing upon this question,
> "are that plaintiff was a citizen of Texas and resided
> "in the Eastern District thereof, and that the defend-
> "ant was a corporation incorporated by the law of
> "Kentucky and a citizen of that State, and was a
> "resident of the Western District of Texas, doing
> "business and having an agent in this district."

In considering, *inter alia*, the Texas statute providing the waiver of an objection to jurisdiction by appearing and urging it, this court said:—

> "The case at bar is not affected by either of the
> "statutes of Texas on which the counsel for the de-
> "fendant in error relies.
>
> "He contends that the plaintiff in error had con-
> "sented to be sued in the Western District by doing
> "business and appointing an agent there under the
> "statute of Texas of 1887, chapter 128, requiring for-
> "eign corporations desiring to transact business in
> "the State, 'to file with the Secretary of State a
> " 'certified copy of its articles of incorporation, duly
> " 'attested, accompanied by a resolution of its board
> " 'of directors or stockholders, authorizing the filing
> " 'thereof, and also authorizing service of process to
> " 'be made upon any of its officers or agents in this
> " 'State engaged in transacting its business, and re-
> " 'questing the issuance to such corporation of a

" 'permit to transact business in this State, said appli-
" 'cation to contain a stipulation that said permit
" 'shall be subject to each of the provisions of this
" 'Act,' one of which was that any foreign corpora-
"tion sued in a court of the State, which should re-
"move the case into a court of the United States
"held within the State 'for the cause that such cor-
" 'poration is a non-resident of this State or resident
" 'of another State from that of the adverse party or
" 'local prejudice against such corporation, shall
" 'thereupon forfeit and render null and void any
" 'permit issued or granted to such corporation to
" 'transact business in this State.' " Citing statutes.

"But that statute requiring the corporation, as a "condition precedent to obtaining a permit to do "business within the State, to surrender a right and "privilege secured to it by the Constitution and laws "of the United States, was unconstitutional and void, "and could give no validity or effect to any agree-"ment or action of the corporation in obedience to its "provisions. Home Ins. Co. of N. Y. *vs.* Morse, "87 U. S., 20 Wall., 445; Barron *vs.* Burnside, 121 "U. S., 186; Texas Land & Mortg. Co. *vs.* Worsham, "76 Texas, 556."

After considering the agreement aforesaid, required by the Texas statute, this court said:—

"But such an agreement could not, since Congress "(as held in Shaw *vs.* Quincy Mining Co. above cited) "has made citizenship of the State, with residence in "the district, the sole test of jurisdiction in this class "of cases, estop the corporation to set up non-com-"pliance with that test, when sued in a Circuit Court "of the United States."

This reaffirmance of Home Ins. Co. *vs.* Morse and Barron *vs.* Burnside, without even mention of Doyle *vs.* Ins. Co., seems to have concluded in our favor the question now presented.

This court's declaration was in emphatic condemnation of statutes like section 631, and the condemnation was expressly put upon the ground that a statute requiring a

corporation, as a condition precedent to obtaining a permit to do business within the State, to surrender a right secured to it by the Federal Constitution and laws, was unconstitutional and void, giving no validity to any agreement or action of the corporation in obedience to its provisions. The broad doctrine for which we contend upon the authority of Home Ins. Co. *vs.* Moss and Barron *vs.* Burnside was reaffirmed and was announced as incontrovertible.

In Martin *vs.* B. & O. Ry. Co., 151 U. S., 684 (38 L. Ed., 315), this court, sustaining Federal jurisdiction on removal from the State court of an action brought in West Virginia by a citizen of that State against a corporation of Maryland licensed to operate a railroad in West Virginia, said that the railroad company had the right, under Federal laws, to remove the action from the State to the Federal court—

> "And could not have been deprived of that right by "any provision in the statutes of the State. Home "Ins. Co. *vs.* Morse, 87 U. S., 20 Wall., 445 (22: 365); "Barron *vs.* Burnside, 121 U. S., 186 (30: 915); Sou. "Pac. Co. *vs.* Denton, 146 U. S., 202-207 (36: 942, "945.)"

In Goldey *vs.* Morning News, 156 U. S., 518 (39 L. Ed., 517), there was an action for libel in a New York court against a Connecticut corporation. The defendant appeared specially, and solely, to institute proceedings for removal of the case to the Federal court. In the Federal court a motion to quash the service of summons was sustained, and the correctness of the ruling was the question before this court. It was contended by the plaintiff, among other things, that the appearance of defendant to remove the case constituted a waiver of objection to the State court's jurisdiction. This court, holding the contrary, declared:—

> "The jurisdiction of the Circuit Court of the United "States depends upon the Acts passed by Congress "pursuant to the power conferred upon it by the Con-

"stitution of the United States and cannot be enlarged "or abridged by any statute of a State. The legisla- "ture or judiciary of a State can neither defeat the "right given by a constitutional Act of Congress to "remove a case from a court of the State into the Cir- "cuit Court of the United States, nor limit the effect "of such removal. Gordon *vs.* Longest, 41 U. S., 16 "Pet., 97 (10: 900); Home Ins. Co. of New York *vs.* "Morse, 87 U. S., 20 Wall., 445 (22: 365); Barron *vs.* "Burnside, 121 U. S., 186 (30: 915); Southern Pac. "Co. *vs.* Denton, 146 U. S., 202, 207-209(30: 942, 945, "946). As was said by this court in Gordon *vs.* Long- "est: 'One great object in the establishment of the "'courts of the United States and regulating their "'jurisdiction was to have a tribunal in each State, "'presumed to be free from local influence, and to "'which all who were non-residents or aliens might "'resort for legal redress.' 41 U. S., 16 Pet., 104 "(10: 900)."

Again, Home Ins. Co. *vs.* Morse, Barron *vs.* Burnside and Sou. Pac. Co. *vs.* Denton are reaffirmed without even mention of Doyle *vs.* Ins. Co.

In Barrow S. S. Co. *vs.* Kane, 170 U. S., 100 (42 L. Ed., 968), the question came to this court on a certificate in an action by Kane against Barrow Steamship Company for damages for personal injuries. The contention of the company in point was that being a foreign corporation no suit could be maintained against it *in personam* without its consent express or implied, and that by doing business in New York it consented to stay there *only as authorized by the statutes of that State*, and that the jurisdiction of the Federal courts of New York depended on the authority given by United States statutes which conferred no authority upon any court to issue process against a foreign corporation in an action by a non-resident, and for a cause not arising within the State. After an elaborate review of the authorities, and of State statutes requiring foreign corporations transacting business in the States to appoint agents to be

served with process, this court again invoked its decision in Lafayette Ins. Co. *vs.* French, and said (page 111):—

> "The object of the provisions of the Constitution "and statutes of the United States, in conferring upon "the Circuit Courts of the United States jurisdiction "of controversies between citizens of different States "of the Union, or between cities of one of the States "and aliens, was to secure a tribunal presumed to be "more impartial than a court of the State in which "one of the litigants resides.
>
> "The jurisdiction so conferred upon the national "courts cannot be abridged or impaired by any stat- "ute of a State. Hyde *vs.* Stone, 61 U. S., 20 How., "170, 175 (15: 874, 876); Smyth *vs.* Ames, 169 "U. S., 466, 516. It has therefore been decided "that a statute which requires all actions against "a county to be brought in the county court "does not prevent the Circuit Court of the United "States from taking jurisdiction of such an action; "Chief Justice Chase saying that 'no statute limita- "'tion of suability can defeat a jurisdiction given by "'the Constitution.' Cowles *vs.* Mercer County, "74 U. S., 7 Wall., 118, 122 (19: 96, 88); Lin- "coln County *vs.* Luning, 133 U. S., 529 (33: 766); "Chicot County *vs.* Sherwood, 148 U. S., 529 "(37: 546). So statutes requiring foreign corpora- "tions, as a condition of being permitted to do busi- "ness within the State, to stipulate not to remove into "the courts of the United States suits brought against "them in the courts of the State, have been adjudged "to be unconstitutional and void. Home Ins. Co. *vs.* "Morse, 87 U. S., 20 Wall., 455 (22: 365); Barron *vs.* "Burnside, 121 U. S., 186 (30: 915); Southern Pa- "cific Co. *vs.* Denton, 146 U. S., 202 (36: 942)."

Again all the previous decisions from Home Ins. Co. *vs.* Morse to Sou. Pac. Co. *vs.* Denton are reaffirmed and Doyle *vs.* Ins. Co. not mentioned.

In Blake *vs.* McClung, 172 U. S., 239, 254 (43 L. Ed., 432, 437), this court, reviewing the power of a State to give residents of the State a priority over non-residents

in the distribution of the assets of a foreign corporation, declared:—

> "We hold such discrimination against citizens of "other States to be repugnant to the second section "of the fourth article of the Constitution of the "United States, although, generally speaking, the "State has the power to prescribe the conditions upon "which foreign corporations may enter its territory "for purposes of business. Such a power cannot be "exerted with the effect of defeating or impairing "rights secured to citizens of the several States by "the supreme law of the land. Indeed, all the powers "possessed by a State must be exercised consistently "with the privileges and immunities granted or pro- "tected by the Constitution of the United States."

This court then elaborately reviewed Lafayette Ins. Co. *vs.* French, Barron *vs.* Burnside, Barrow Steamship Co. *vs.* Kane, &c., and said:—

> "So statutes requiring foreign corporations as a "condition of being permitted to do business within "the State to stipulate not to remove into the courts "of the United States suits brought against them in "the courts of the State have been adjudged to be un- "constitutional and void. Home Ins. Co. *vs.* Morse, "87 U. S., 20 Wall., 445 (22: 365); Barron *vs.* Burn- "side, 121 U. S., 186 (30: 915); Sou. Pac. Co. *vs.* "Denton, 146 U. S., 202, 207 (36: 943); see Ducat "*vs.* Chicago, 10 Wall., 410, 415 (19: 972, 973.)"

Again, in this review of the cases of Home Ins. Co. *vs.* Morse and subsequent cases, those above mentioned are reaffirmed and Doyle *vs.* Ins. Co. is not mentioned. The decision last cited is likewise valuable, inasmuch as it concerns a guaranty of the Federal Constitution of a matter different from that of Federal jurisdiction, and emphasizes the impotence of the States, directly or indirectly, to defeat any of the provisions of the Federal Constitution and laws.

In Dayton Coal & Iron Co. *vs.* Barton, 183 U. S., 23, 24 (46 L. Ed., 61, 64), a foreign corporation questioned the constitutionality of a State statute requiring corporations and individuals issuing store orders in payment for labor to redeem them in cash. This court, having held the statute valid as to a domestic corporation, decided against its contention, and after citing Orient Ins. Co. *vs.* Daggs, 172 U. S., 557 (43 L. Ed., 552), wherein it had said that what a State might do with its own corporations it might do with foreign corporations admitted into the State, and that the power to impose conditions upon foreign corporations was certainly as extensive as like power over domestic corporations, concluded:—

> "We do not care, however, to put our present de-
> "cision upon the fact that the plaintiff in error is a
> "foreign corporation, nor to be understood to inti-
> "mate that State legislation, invalid as contrary to
> "the Constitution of the United States, can be im-
> "posed as a condition upon the right of such a cor-
> "poration to do business within the State. Home
> "Ins. Co. *vs.* Morse, 20 Wall., 445 (22 L. Ed. 365);
> "Blake *vs.* McClung, 172 U. S., 239, 254 (43 L. Ed.,
> "432, 19 Sup. Ct. Rep., 165.)"

This court was unwilling to base its decision upon the ground, or to be understood to intimate, that a State could impose as a condition of admitting a foreign corporation to do business within its territory, a requirement contrary to the Federal Constitution. Thus are Home Ins. Co. *vs.* Morse, the earliest, and Blake *vs.* McClung, the latest, case of the class reaffirmed and Orient Ins. Co. *vs.* Daggs, so much relied on by our opponents as sustaining their contention, is distinguished.

In view of the array of authorities, from Home Ins. Co. *vs.* Morse to Dayton Coal and Iron Co. *vs.* Barton, announcing in the most unmistakable terms the doctrine we invoke, it is difficult to believe that this court will affirm the judgment of the Kentucky court. We are entitled, we submit, to its reversal, both upon principle and upon authority.

This court's decisions in the cases just cited are followed in interesting opinions in Bigelow *vs.* Nickerson, 70 Fed. R., 121; Met. L. Ins. Co. *vs.* McNall, 81 Fed. R., 888; Mut., &c., Co. *vs.* Boyle, 82 Fed. R., 705.

In Bigelow *vs.* Nickerson, the U. S. C. C. A., Seventh Circuit, held a provision limiting jurisdiction of a right of action for death, conferred by statute, to courts established by State Constitution and laws, an abortive attempt to exclude Federal jurisdiction and void. The dissenting judge sharply emphasized the decision against our opponents' present contention, by advocating the validity of the statute upon the ground that the limitation was not upon a general right of action, but upon a right created by the statute which imposed the proviso. The court held, however, that whenever a right was given by statute it might be enforced in the Federal court. After citing authorities it said that in Barron *vs.* Burnside this court had declared that it had—

> "Uniformly asserted that no conditions can be im-
> "posed by the State which are repugnant to the Con-
> "stitution and laws of the United States. We con-
> "sider the question foreclosed, and no longer open
> "to discussion. No condition imposed upon a right
> "granted by a State, which prevents one from avail-
> "ing himself of his constitutional prerogative of ap-
> "peal to the courts of the United States, can be up-
> "held."

The court, reviewing Railway *vs.* Whitton (13 Wall., 270), said (page 121):—

> "It was there objected that the right to sue in such
> "case existed by virtue of the statute only, and that
> "the right by the statute was given only on a condi-
> "tion that the suit be brought in a Wisconsin court.
> "The contention was, however, overruled by the Su-
> "preme Court by the unanimous opinion of the
> "judges."

In Met. L. Ins. Co. *vs.* McNall, the suit was by a company to enjoin the insurance superintendent from revoking

complainant's license for removing a case to the Federal court. The court finding that the officer acted contrary to law, said (page 896):—

"If the statutes of Kansas would bear the construc-
"tion contended for by defendant, giving him au-
"thority to revoke the certificates of authority of in-
"surance companies because they refused to give up
"their rights to resort to the courts for redress and
"settlement of disputed claims, the question arises.
"Could the State impose such terms on the com-
"panies? It must be admitted that the State of Kan-
"sas has the right to exclude foreign corporations en-
"tirely from doing business in the State, and it may
"impose any terms *not objectionable to the Constitu-*
"tion or laws of the United States, on any such cor-
"porations as a condition to their doing business in
"the State." Citing Ins. Co. *vs.* French, Paul *vs.* Virginia, Ins. Co. *vs.* Morse, Doyle *vs.* Ins. Co. and Barron *vs.* Burnside.

"The defendant relies upon the Doyle case to sus-
"tain his contention. In that case, the laws of Wis-
"consin in terms required the defendant to do the
"Act complained of, to wit, revoke the license of the
"insurance company, and the company had signed
"and filed its consent to the law as a condition to re-
"ceiving permission to do business in the State,
"which consent was that it would not remove its suits
"from the State to the Federal courts. This deci-
"sion, sustaining the law, was made by a divided
"court; but in the later case of Barron *vs.* Burnside,
"121 U. S., 199, 7 Sup. Ct., 931, the court affirmed the
"Morse case, which held such a stipulation invalid,
"and explained and limited the Doyle case. The
"court, speaking of the rule established in the Morse
"case, says (94 U. S., 538): 'This was upon the prin-
" 'ciple that every man is entitled to resort to all the
" 'courts of the country, to invoke the protection
" 'which all the laws and all the courts may afford
" 'him, and that he cannot barter away his life, his
" 'freedom or his constitutional rights.'

"The temporary injunction will be granted."

The decision in Mut. Life Ins. Co. *vs.* Boyle is to similar effect as Met. Life Ins. Co. *vs.* McNall.

Opponent's Authorities.

Orient Ins. Co. *vs.* Daggs, *supra*, and Waters, &c., Oil Co. *vs.* Texas, 177 U. S., 28 (44 L. Ed., 657), have no application because in those cases the conditions imposed upon the foreign corporation were only conditions imposed by the State upon its own corporations, and were not conditions which required the surrender of rights guaranteed by the Federal Constitution or laws passed in pursuance thereof. The enunciation in the opinion we now assail, that by section 631, Kentucky Statutes, the Kentucky Legislature simply declared to the foreign corporation, "I will license you to do business here on the same plane "as domestic corporations," &c. (Record, page 17), loses sight of the consideration that the foreign corporation, by virtue of its position, cannot be put upon an equality with the domestic corporation, *a circumstance so obvious to the framers of the Federal Constitution as to beget the necessity of the Federal courts.* If the Kentucky Legislature could eradicate that local prejudice which, by the framers of the Federal Constitution, was made the basis for creating the Federal courts, then there might be ground for the announcement just quoted from the State court.

This court disposes of the matter in Home Ins. Co. *vs.* Morse, in these words:—

> "The State of Wisconsin can regulate its own "corporations and the affairs of its own citizens, in "subordination, however, to the Constitution of the "United States. The requirement of an agreement "like this (to forbear access to the Federal Courts) "from their own corporations would be *brutum ful-* "*men*, because they possess no such right under the "Constitution of the United States. A foreign citi- "zen, whether natural or corporate, in this respect "possesses a right not pertaining to one of her own "citizens. There must necessarily be a difference "between the *status* of the two in this respect."

This declaration from this court ends the discussion. The Legislature of Kentucky cannot, as suggested by the Kentucky court, place upon the same plane foreign and domestic corporations, for, as stated by this court, "There "must necessarily be a difference between the *status* of the "two in this respect."

Our opponent takes great comfort from the subsequent citation by this court of Doyle *vs.* Ins. Co., but an examination of those citations dispels the illusion that it meant to reaffirm anything in the Doyle case, contrary to its decision in the long line of cases headed by Home Ins. Co. *vs.* Morse.

In U. S. *vs.* Des Moines, &c., Co., 142 U. S., 545 (35 L. Ed., 1100), and New Orleans *vs.* Warner, 175 U. S., 149 (44 L. Ed., 200), this court cites Doyle *vs.* Ins. Co. in conjunction with cases like Fletcher *vs.* Peck and *ex parte* McCardle simply for the proposition that it is not within the province of the judiciary to control the conduct of the legislature even if acting from impure motives, and that an inquiry into their motives is not to be sanctioned. In Pope, &c., Co. *vs.* Gormully, 144 U. S., 224, 236 (36 L. Ed., 414), this court held, after citing the Morse and Doyle cases, that a contract not to set up any defense whatever in any suit which might be begun upon fifty different causes of action, was in violation of public policy. It cannot, therefore, be maintained that the Doyle case, so far as impaired by the decision exactly to the contrary in Barrow *vs.* Burnside and in subsequent cases to the same effect, has been reinstated as an authority by the subsequent cases citing it. In none of those cases is there the slightest intimation of any intention to depart from Barrow *vs.* Burnside.

In Cable *vs.* U. S., &c., Co., 191 U. S., 288 (48 L. Ed., 188), this court said (page 307):—

> "Whether this case (Doyle case) has been shaken "by the subsequent case of Barron *vs.* Burnside, 121 "U. S., 186, 199, 30 L. Ed., 915, 919, 1 Inters. Com. "Rep., 295, 7 Sup. Ct. Rep., 931; Blake *vs.* McClung,

"172 U. S., 239, 254, 43 L. Ed., 432, 437, 19 Sup. Ct., "Rep., 165, and Dayton Coal & I. Co. *vs.* Barton, 183 "U. S., 23, 25, 46 L. ed. 61, 64, 22 Sup. Ct. Rep., 5, it "is not material here to discuss. It has from an early "day been held that a corporation created by one "State could transact business in another State only "with the consent, expressed or implied, of the latter "State, and that such consent might be accompanied "by such conditions as the latter State might think "fit to impose, provided they were not repugnant to "the Constitution or laws of the United States, or "inconsistent with those rules of public law which "secure the jurisdiction and authority of each State "free from encroachment by all others, or that prin- "ciple of natural justice which forbids condemnation "without opportunity for defense. Lafayette Ins. "Co. *vs.* French, 18 How., 407, 15 L. ed. 452; Wa- "ters-Pierce Oil Co. *vs.* Texas, 177 U. S., 28, 44 L. "ed., 657, 20 Sup. Ct. Rep., 518; New York L. Ins. "Co. *vs.* Cravens, 178 U. S., 389, 401, 44 L. Ed., 1116, "1124, 20 Sup. Ct. Rep., 962; John Hancock Mut. L. "Ins. Co. *vs.* Warren, 181 U. S., 73, 76, 45 L. ed., 755, "758, 21 Sup. Ct. Rep., 535."

By this language this court certainly did not intend to discredit the long line of decisions beginning with the Morse case and ending with the Dayton Coal and Iron Company case, but simply meant to say that the question now under review was not at issue. If this were not otherwise clear it would be demonstrated by the consideration that this court there repeats only what it had so often said, viz., that the State might annex conditions to its consent that a foreign corporation transact business within its borders "provided they were not repugnant to the Con- "stitution or laws of the United States," &c., citing in behalf of the proviso a long line of authorities.

In Cargill Co. *vs.* Minnesota, 180 U. S., 468, this court, speaking through Mr. Justice Harlan, said:—

"The defendant, however, insists that some of the "provisions of the statute are in violation of the Con- "stitution of the United States, and if it obtained the

"required license, it would be held to have accepted "all of its provisions, and (in the same words of the "statute) 'thereby to have agreed to comply with "'the same.' (Section 1.) The answer to this sugges- "tion is that the acceptance of a license, in whatever "form, will not impose upon the licensee an obliga- "tion to respect or to comply with any provisions of "the statute or with any regulations prescribed by "the State Railroad and Warehouse Commission "that are repugnant to the Constitution of the United "States. A license will give the defendant full au- "thority to carry on its business in accordance with "the valid laws of the State and the valid rules and "regulations prescribed by the Commission. If the "Commission refused to grant a license, or if it sought "to revoke one granted, because the applicant in the "one case, or the licensee in the other, refused to "comply with statutory provisions or with rules or "regulations inconsistent with the Constitution of the "United States, the rights of the applicant or the "licensee could be protected and enforced by appro- "priate judicial proceedings."

We submit that the present case involves a right on the part of foreign corporations different from that involved in those cases in which they have been compelled to submit to State legislation of the kind exemplified in the case of Insurance Co. *vs.* Mettler, 185 U. S., 332, and in that of the Iowa Insurance Commissioner's Appeal.

So far as regards a revocation of a license during the currency of a term in which the State has authorized an insurance company to do business therein, the revocation inflicts a penalty under a law void because contrary to the Federal Constitution. So far as the law is applicable to a grant of future licenses, it is void because against the public policy of the United States as announced by that Constitution.

The Federal Constitution guarantees, under conditions of diverse citizenship, the right of all persons and cor-

porations to have their litigations determined, free of local bias, in the Federal courts.

However a law of the State is worded, or sought to be made effective, which is in violation of the Federal Constitution, and seeks to inflict a penalty by way of revocation or of refusal to enter, upon those who assert their constitutional right, it is invalid.

Every State statute which is in direct antagonism to the public policy of the Union as announced in its Constitution and in its laws, must yield.

No corporation should be permitted to be punished by way of revocation of an entrance into a State theretofore allowed, unless such revocation is by virtue of a valid law; nor should it be denied a right to do business in a State, which right exists unless there be a valid State prohibition, if such prohibition is by virtue of an Act of Assembly denying a constitutional right of Federal protection, in violation of national policy.

JOHN G. JOHNSON,
EDMUND F. TRABUE,
JOHN D. DOOLAN,
ATTILLA COX, JR.,
WM. BRO SMITH,
For Plaintiffs in Error.

REPLY

BRIEF

FILE COPY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 184.

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

HENRY R. PREWITT, INSURANCE COMMISSIONER OF THE STATE OF KENTUCKY, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

Reply Brief for Plaintiff in Error.

Our original brief anticipated most, if not all, of our learned opponents' points, but a categorical reply to them will present most directly the pivotal issues between us. His points condensed are by him thus stated :

That "the foreign company may of course take its case into the Federal court. That is its constitutional right" (*page 4*), but "is it contrary to the Constitution and the laws of the United States that one who is entitled thereunder to remove a case to the Federal courts is left free to do so, but in the event he does remove he must forfeit a privilege held at the will of the State?" (*page 13*).

In support of their position counsel admit (*page 11*) "repug-"nancy (between Federal Constitution and State statutes) "does exist whenever the State requires the company to "agree in advance not to remove—such an agreement "is void and is so treated in all the cases. In the present "law there is no repugnancy because there is no agree-"ment—no stipulation—for a surrender of any right." (See also *page 15*.)

They define their position to be that if the statute requiring the license make its issuance depend upon a "*stipulation*" not to remove cases to the Federal court the *statute* is void (*page 24*), "and this because the parts of it which might "have been upheld as valid and lawful were so interwoven "with the unconstitutional requirement of a void stipulation "as to make the whole bad" (the Iowa statute involved wherein, by the way, provides for no "agreement" or "stipulation"), *citing Barron vs. Burnside* (*page 25*).

That, *e converso*, however, if the statute requiring the permit impose both *objectionable and unobjectionable* requirements, "but not so 'coupled' as to be inseparable" the statutory requirement of the license would be valid.

The vice of our opponents' argument is that they claim for the State the power to prevent by a general law the exercise for the future of a right which they admit is the "constitutional right" of the company under the Federal Constitution.

The admission that the requirement of the "agreement" or "stipulation" as a condition of the issuance of the license renders the statute invalid is fatal to counsel's entire contention, for an "agreement" or a "stipulation" to surrender a "constitutional right" can no more contravene the constitution than the actual surrender of the right. It is the right of removal to the Federal courts that the Constitution secures, and therefore it is the enforced surrender of the right and not any particular form of surrender that constitutes an

infringement of the Constitution and an illegal condition of a statutory requirement of a license."

Nor does the fact that the "agreement" or "stipulation" to surrender the right of removal is required to be made *in advance*, as contended by opponents, distinguish the Iowa case—or the case admitted by our opponents to infringe the Federal Constitution—from the Kentucky or instant case, for the Kentucky statute likewise *in advance* requires the insurance commissioner *to enforce the abandonment of such right of removal as long as the company remains in the State.* The right of removal could only exist while the company did business in the State, and the statute forbids the exercise of this "constitutional right" during every moment of that time. In each case the legislation provides *in advance* for destruction of the right guaranteed by the Federal Constitution and for the same period of time—*i. e.*, during the corporation's sojourn in the State.

The circumstance that the "agreement" or "stipulation" is required in one case and not in the other constitutes only a formal or nominal distinction between the cases, for it is admitted that the "*agreement*" *or* "*stipulation*" *is void, and could not prevent the removal.* In each case, therefore, the right of removal remains really unimpaired, but in each the statute provides as effectually as possible for destruction of the "constitutional right."

Nor is there any force in the suggestion that the "agreement" or "stipulation" to surrender the "constitutional right" is in one case so interwoven with the provision for license as to invalidate the entire statute, and in the other not, for the right to the license is made as dependent upon the surrender of the "constitutional right" in the latter case as upon the "agreement" or "stipulation" to surrender it in the former. The difference is in form only, and the apparent or seeming separation of the provisions for the grant of license and for the cancellation of the license in case of the removal in the Kentucky statute is purely delusive, and

contrived solely to suppress the real purpose or effect of the enactment. The material and crucial consideration is that in each case, *by provision in advance*, the company is compelled to abandon the right which the Constitution guarantees. The suggestion that the company retains the right of removal is fallacious. The right appertains only to a non-resident, only exists as incident to the non-resident company's sojourn in the State, and if it must forego the right as long as it remains, then the right is completely abandoned, whether there exist the "agreement" or "stipulation" to abandon it or not. The result, therefore, of our opponents' doctrine (*as said in our original brief, pages 8, 9*) is that some of the corporations within the State, and all individuals, would have the protection of the Federal Constitution, while others would be permitted to remain only upon condition of foregoing that protection and being subject to the exercise of arbitrary power. If the State may require the foreign corporation, *during its sojourn in the State*, to forego one guaranty of the Federal Constitution, it may equally require it to forego all, and thus there would be within the State certain corporations destitute of the protection of the Federal Constitution while others enjoyed it. It is not true, as our opponents contend, that the right of removal would remain unimpaired and only the right to transact business be impaired, for the period of the abandonment of the right of removal is by the statute made coexistent with the period of the company's sojourn in the State.

The anomaly, therefore, of some corporations with and some corporations without the protection of the Federal Constitution would, as aforesaid, exist in the State. The surrender or abandonment of the "constitutional right" of removal to the Federal courts would consequently as certainly exist as if the legislature had confessed instead of attempting to suppress the fact in the statute. The situation on the Kentucky statute, therefore, is not distinguish-

able on the constitutional objection from that on the Iowa statute noted in *Barron vs. Burnside*, albeit there was a "stipulation" for the surrender of the right of removal in the one and not in the other case.

It thus appears that the *instant case* would not be distinguishable from *Barron vs. Burnside* even if the Iowa statute required a stipulation, but in reality it requires none, nor does the Texas statute.

Accordingly we submit that *Barron vs. Burnside* (*121 U. S., 186*) and *Sou. Pac. Co. vs. Denton* (*146 U. S., 202*) are conclusive in favor of our claim "that the entire purpose of" the Kentucky statute "is to deprive the foreign corporation' * * * "of the right conferred upon it by the Constitu- "tion and laws of the United States to remove a suit from "the State court into the Federal court," &c., (*121 U. S., 197*), and that the statute essentially "makes the right to a per- "mit dependent upon the surrender by the foreign corpora- "tion of a privilege secured to it by the Constitution and "laws of the United States," and is unconstitutional (*121 U. S., 200*); and is a "vain attempt to prevent removals into "the national courts" (*146 U. S., 207*).

JOHN G. JOHNSON,
WM. BRO. SMITH,
EDMUND F. TRABUE,
Counsel.

JOHN C. DOOLAN,
ATTILLA COX, JR.,
Of Counsel.

APR 1 1906
SUPREME COURT U. S.

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 184.

THE TRAVELERS INSURANCE COMPANY OF HARTFORD, CONNECTICUT, - - *Plaintiff in Error,*

vs.

HENRY R. PREWITT, INSURANCE COMMISSIONER OF THE STATE OF KENTUCKY.

MOTION.

The Traverers Insurance Company, plaintiff in error, says that the authority to transact business in Kentucky which was granted to it by the Insurance Commissioner, July 1, A. D., 1904, as appears in the record, was not permitted to expire as assumed in this court's opinion herein, but that Henry R. Prewitt, Insurance Commissioner, aforesaid, in order to avoid the unnecessary loss to plaintiff in error, and the destruction of its business *pendente lite* renewed the said authority July 1, 1905, for the term of one year next ensuing, subject to his right to cancel, and with the understanding that he would cancel such authority immediately upon this court's decision in his favor of the Federal Question raised in this record, if decided in his favor; accordingly, and to manifest in this court the facts aforesaid, plaintiff in error moves the court for leave to file the affidavit of its counsel, Edmund F. Trabue, and the letter written to said Trabue by said Prewitt, March 12, 1906.

JOHN G. JOHNSON,
EDMUND F. TRABUE,
Counsel.

Notice that the above entitled motion will be made April 2, A. D., 1906, is hereby accepted.

HENRY R. PREWITT,
Insurance Commissioner,
by J. H. HAZELRIGG,
Counsel.

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AFFIDAVIT.

Edmund F. Trabue says that he is and has been since the inception of this suit counsel for plaintiff in error, and that on or before July 1, 1905, defendant in error renewed for one year next ensuing the authority of said plaintiff to transact business in Kentucky, upon the understanding, as affiant has always understood, that such renewal was without prejudice to said defendant's right to cancel said authority, should this court decide in defendant's favor the Federal Question of the constitutionality of Section 631, Kentucky Statutes. That said act of said defendant was done to avoid the loss that might very unjustly accrue to said plaintiff if unlawfully deprived of its authority to transact business, should Section 631 Kentucky Statutes be afterward held unconstitutional.

Affiant attaches hereto the authority issued as aforesaid, July 1, 1905, and a manuscript letter written to him

by defendant, Prewitt, on the 12th day of March, 1906, responsive to a letter affiant wrote Prewitt, in words and figures as follows:

March 9, 1906.

TRAVELERS' INS. CO. v. PREWITT.
Henry R. Prewitt, Esq.,
Insurance Commissioner,
Frankfort, Ky.

Dear Sir:

When the Travelers' license was renewed July 1, 1905, I am advised that some *memo.* was made of record probably to the effect that it was without prejudice to the rights of the Commissioner to cancel the license in case of a decision in his favor by the Supreme Court. Please advise me what was done and if there be any record send me a copy of it with *memo.* of costs of copy, and much oblige.

Hoping to see you soon, I am,

Yours very truly,

T. Y. EDMUND F. TRABUE.

Affiant says the foregoing statements are true to the best of his knowledge and belief.

EDMUND F. TRABUE.

Subscribed and sworn to before me by Edmund F. Trabue this 31st day of March, 1906. My commission expires February 15, 1908.

V. C. YEAGER,
Notary Public, Jefferson County, Kentucky.